



**COMMISSION MEETING MINUTES**  
**October 27, 2003**

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, October 27, 2003, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

***PRESIDING:*** John T. Steen, Jr., Commissioner Chairman

***PRESENT:*** Gail Madden, Commissioner  
Kel Seliger, Commissioner

***STAFF PRESENT:*** Alan Steen, Administrator

Mona Appling, Acting Information Resources  
Department Director

Lou Bright, General Counsel

Deborah Dixon, Seller Training Coordinator

Jeannene Fox, Assistant Administrator

Buck Fuller, Compliance Department Director

Greg Hamilton, Chief of Enforcement

Amy Harrison, Director of Licensing

Linda Hubbard, Administrative Assistant

Denise Hudson, Director of Resource  
Management

Renee Johnston, Executive Assistant

Charlie Kerr, Director of Fiscal Services  
Department

Al Luna, Enforcement Agent

Andrea Luna, Grants and Planning Coordinator

Vivian Rowe, Human Resources Department

Director  
Sam Smelser, Assistant Chief of Enforcement

**GUESTS PRESENT:** Kelly Barker, representing daughter, Austin, Texas  
Jorey Berry, State Director of Public Affairs, March of Dimes  
Marsha L. Duran, Student, San Antonio, Texas  
Peggy Fikae, Chief, Austin Bureau, San Antonio  
Express-News  
Selyna M. Flores, San Antonio, Texas  
Anna Fuentes, San Antonio, Texas  
Lori Gabbert, Legislative Budget Board  
Glen Garey, General Counsel, Texas Restaurant Association  
Alan Gray, Licensed Beverage Distributors, Inc.  
Jim Haire, Tyler, Texas  
Rose Hook, Project Coordinator, UT Health Science Center at San Antonio  
Karen Housewright, State Executive Director, Mothers Against Drunk Driving (MADD)  
Jay Howard, representing DISCUS, Inc.  
Joye C. Hyman, Cedar Creek, Texas  
Mignon McGarry, representing Republic Beverage  
Cindy McNamara, Director of Sales, IntelliCheck, Inc.  
Fred Marosko, Texas Package Stores Association  
Adriana Perez, San Antonio, Texas  
Jack Roberts, Anheuser Busch  
Alfonso Royal, III, Analyst, Legislative Budget Board  
Robert Sparks, Licensed Beverage Distributors, Inc.  
Logan Spence, Office of the Governor

Tom Spilman, Vice-President, WBDT  
Jerry Tucker, Office of the Governor  
Randy Yarbrough, Wholesale Beer Distributors  
of Texas

### **CALL TO ORDER**

Chairman John T. Steen, Jr., called the meeting of the Texas Alcoholic Beverage Commission (TABC) to order. Chairman Steen announced that TABC was awarded the National Liquor Law Enforcement Association's Award for Liquor Law Enforcement Agency of the Year. He noted that this was the second time that TABC has been recognized with this award. Chairman Steen credited the honor to the hard work and dedication of TABC staff and to Chief of Enforcement Gregory Hamilton. Chairman Steen presented the award to Mr. Hamilton, who accepted the award on behalf of TABC staff.

### **APPROVAL OF SEPTEMBER 15, 2003, COMMISSION MEETING MINUTES**

**Chairman Steen called for a motion to approve the meeting minutes of September 15, 2003. Ms. Madden moved to approve the minutes. Mr. Seliger seconded the motion. The motion carried.**

### **ADMINISTRATOR'S REPORT**

Chairman Steen called upon Administrator Alan Steen to provide the Administrator's Report.

Mr. Steen provided an update on changes made to the Alcoholic Beverage Code as a result of the third-called special session. Spending authority was added for \$250,000 each year of the biennium. The amendment allows TABC to replace the \$250,000 from the appropriation that TABC is required to transfer to the Department of Agriculture for the Wine Marketing Assistance Program. Mr. Steen commended Jeannene Fox for her efforts in this initiative. Mr. Steen reported that privileges under a mixed beverage permit were amended to allow cruise ships to obtain a permit if their ports were in dry areas. Another amendment that resulted from the special

session concerned the restriction of club permits; permits may not be issued to sexually oriented clubs in dry areas.

Mr. Steen reported that the annual supervisors' meeting was held in Fort Worth the first part of October. At the meeting, changes to the code were discussed and two statewide work groups were established: one on TABC training issues and one on TABC's hiring processes. Also, TABC hosted the National Conference of State Liquor Administrators conference held in San Antonio on October 19-22.

Mr. Steen discussed that audits were currently being performed on the staff services and training divisions. The audits should be completed in November, and Mr. Steen will report on the results at an upcoming Commission meeting.

Mr. Steen reported that as a result of staff discovering an intruder after hours in the headquarters building, a workgroup has been established to recommend security measures during and after hours for the headquarters building.

### **FISCAL STEWARDSHIP OF AGENCY**

Chairman Steen called upon Denise Hudson, Director of Resource Management, to provide the report on the fiscal stewardship of the agency.

Ms. Hudson referred to an earlier report provided to the Commissioners (Attachment 1) and briefly reported the fourth quarter key performance measures. TABC attained or exceeded nine of the ten performance measures. One measure—average cost per inspection—was below the allowable range. The allowable range is 95% to 105%, and TABC attained 90.7% of the target. Ms. Hudson explained that the number of inspections was almost 5% greater than anticipated, and the cost of operations was 7.5% less than budgeted. The lower cost is due to the budget cuts mandated by the Legislature.

Ms. Hudson also reported on property loss for FY 2003. The agency deleted one item with a value of \$2,650 for a loss of .039 of one percent of the agency's capital property. The item—a laptop computer—was stolen from a vehicle of an employee who was on assignment in Dallas. The item

was reported to the State Comptroller's Office, and no employee negligence was determined to be involved in the theft of this item.

### **HUMAN RESOURCES STATISTICAL OVERVIEW**

Chairman Steen called upon Vivian Rowe, Director of Human Resources, to present a statistical overview of Human Resources.

Ms. Rowe showed a media presentation (Attachment 2) on statistical information on three major areas of Human Resources: 1) recruitment; 2) selection/staffing; and 3) turnover.

Ms. Rowe discussed the internal and external recruitment methods utilized by TABC. Chairman Steen asked about TABC's participation in job fairs. Ms. Rowe responded that because job fairs tend to be cost-prohibitive, TABC participates in very few of them and relies more heavily on other recruitment methods. Ms. Rowe reviewed the minority or female applicants versus total applicants for agent trainee positions; in fiscal year 2003, 59% of agent trainee applicants were minority or female. Mr. Seleger asked Ms. Rowe what the minority breakdown of the agent trainee applicants were; **Ms. Rowe stated that she would be able to provide this breakdown in future reports.**

Ms. Rowe also reviewed the selection/staff process and TABC's turnover rate. TABC's turnover rate for fiscal year 2003 was approximately 10.8% versus 14.4% for the total of Texas state agencies. Ms. Rowe discussed the reasons for turnover in TABC from fiscal year 2000 through fiscal year 2003. She noted that in fiscal year 2003, there was a total of 4,900 retirements in Texas state government. There are approximately 9,000 state employees who will be eligible to retire in fiscal year 2004-2005.

### **ACCEPTANCE OF DONATION FROM L.E.A.D.**

Chairman Steen called upon Gregory Hamilton, Chief of Enforcement. Mr. Hamilton explained that L.E.A.D. (Law Enforcement Appreciation Day) of Hays County is a non-profit organization dedicated to raising funds for the law enforcement agencies in Hays County. Donations from this event have been given to the Kyle Police Department, Hays County Constables Office, Texas Game Wardens Association, Texas Department of Public Safety, and other Hays County organizations. Between last year's and this year's

events, L.E.A.D. has offered a donation to the San Marcos TABC office totaling \$4,650. Mr. Hamilton requested the Commissioners' permission for the San Marcos TABC office to accept the donation for use to purchase police-related equipment and materials.

**Chairman Steen called for a motion. Ms. Madden moved that TABC accept the donation of \$4,650 from the Law Enforcement Appreciation Day of Hays County for use by TABC's San Marcos office. Mr. Seliger seconded the motion. The motion carried.**

### **APPROVAL OF PROPOSED AMENDMENT TO 16 TAC §33.1**

Chairman Steen called upon Lou Bright, General Counsel, to report on the proposed amendment to 16 TAC Section 33.1 (Attachment 3).

Mr. Bright explained that the amendment to Section 33.1, governing the fitness of persons with prior criminal convictions or deferred adjudications to hold alcoholic beverage licenses and permits, would bring the rule into conformity with legislative changes. Mr. Bright stated that no comments were received on the proposed amendment, and he recommended the Commissioners' approval.

**Chairman Steen called for a motion. Mr. Seliger moved that the TABC Commissioners approve the proposed amendment to 16 Texas Administrative Code, Section 33.1, concerning final conviction or deferred adjudication. Ms. Madden seconded the motion. The motion carried.**

### **APPROVAL OF PROPOSED AMENDMENT TO 16 TAC §33.6**

Chairman Steen called on Mr. Bright to discuss the proposed amendment to §33.6 (Attachment 4). Mr. Bright explained that the rule relates to §6.04 of the Alcoholic Beverage Code. The current terms of the rule allow applications to be filed within 10 days after expiration of the license or permit; however, the current terms are now void because §6.04 of the Alcoholic Beverage Code allows renewal applications to be filed within 30 days after expiration of a license or permit. Mr. Bright recommended Commissioner approval of the amendment in order to conform to the law. He asked that the Commissioners adopt the rule with one change to the

text as originally published (one change to reflect “30” rather than “10” had been omitted in the original publication).

**Mr. Steen called for a motion. Ms. Madden moved that the TABC Commissioners approve the proposed amendment to 16 Texas Administrative Code, Section 33.6, concerning renewal of licenses and permits after expiration, with changes to the text originally published in the *Texas Register*, as recommended by staff. Mr. Seliger seconded the motion. The motion carried.**

#### **APPROVAL OF PROPOSED AMENDMENT TO 16 TAC §33.11**

Chairman Steen called upon Lou Bright, General Counsel, to report on the proposed amendment to 16 TAC Section 33.11 (Attachment 5).

Mr. Bright explained that the rule governs the filing procedures for the application and issuance of temporary wine and beer retailer permits. The amendment is proposed in response to the enactment of House Bill 1625 amending Chapter 27 of the Alcoholic Beverage Code to allow use of a temporary wine and beer retailer permit outside the county of the permittee’s primary place of business. Mr. Bright asked that the Commissioners adopt the rule with wording change to the text as originally published, under §33.11 (d), to read: “Ten days following the temporary event, the temporary license/permit holder that sells wine, beer, or malt liquor under the temporary license/permit in a county other than the county in which the basic license/permit is located...” Mr. Bright stated that no comments were received on the proposed amendment.

**Chairman Steen called for a motion. Mr. Seliger moved that the TABC Commissioners approve the proposed amendment to 16 Texas Administrative Code, Section 33.11, concerning application and issuance with changes to the text originally published in the *Texas Register*, as recommended by staff. Ms. Madden seconded the motion. The motion carried.**

#### **APPROVAL OF PROPOSED AMENDMENT TO 16 TAC §41.49**

Mr. Bright discussed the proposed amendment of §41.49, relating to the fee imposed on issuance of temporary memberships issued by private clubs (Attachment 6). The current rule requires a collection of a \$2 fee for

each temporary membership card; this rule is void because §32.09 of the Alcoholic Beverage Code requires the collection of a \$3 fee. Mr. Bright recommended Commissioner adoption of the amended rule as well as additional language to the text originally published in the *Texas Register*, adding “corporate check” under (d) (1). He stated that no comments were received relating to this rule amendment.

**Ms. Madden moved that the TABC Commissioners approve the proposed amendment to 16 Texas Administrative Code, Section 41.49, concerning private clubs and temporary memberships, with changes to the text originally published in the *Texas Register*, as recommended by staff. Mr. Seliger seconded the motion. The motion carried.**

#### **APPROVAL OF PROPOSED NEW RULE 16 TAC §41.55**

Mr. Bright discussed the proposed new rule, §41.55, regulating the storage of malt beverages that are unlawful for sale in Texas by Texas wholesalers and distributors (Attachment 7). The rule is proposed to allow Texas wholesalers and distributors to possess and store malt beverages that are illegal for sale in Texas, to be in compliance with House Bill 941. He stated that no comments were received regarding the rule. Mr. Bright recommended Commissioner adoption of the new rule with wording change from that originally published in the *Texas Register* [41.55 (f) to read: “Each transaction relating to malt beverages for export shall be reported separately on the monthly Distributors Report...”].

**Mr. Seliger moved that the TABC Commissioners approve the new rule to 16 Texas Administrative Code, Section 41.55, concerning malt beverages for export, with changes to the text originally published in the *Texas Register*, as recommended by staff. Ms. Madden seconded the motion. The motion carried.**

#### **APPROVAL OF PROPOSED REPEAL OF 16 TAC §45.100**

Mr. Bright discussed the proposed repeal of Section 45.100, relating to advertising and promotion of alcoholic beverages in public entertainment facilities (Attachment 8). The repeal is proposed because of the enactment of Senate Bill 1380, adding the Public Facilities Entertainment



Act to Chapter 108 of the Alcoholic Beverage Code. Mr. Bright stated that no comments were received on the proposed repeal.

**Ms. Madden moved that the TABC Commissioners repeal 16 Texas Administrative Code, Section 45.100, concerning advertising and promotion in public entertainment facilities. Mr. Seliger seconded the motion. The motion carried.**

### **CONSIDERATION OF IMPOSING MANDATORY FETAL ALCOHOL SYNDROME WARNING SIGN REQUIREMENT**

Chairman Steen called upon Jeannene Fox, Assistant Administrator, to discuss Commissioner consideration of imposing mandatory fetal alcohol syndrome warning sign requirements.

Ms. Fox explained that unlike the other rules just adopted by the Commissioners which had already been published, she was presenting a request made to TABC to publish a proposed rule warning the public of the dangers of consuming alcoholic beverages while pregnant.

Ms. Fox reminded the Commissioners that this issue was brought to TABC last fall. In December 2002, TABC--through the Governor's Office--requested retailers to voluntarily publish or post such warning signs. A small warning sign/decal was sent out to 40,000 retailers in English and Spanish, at a cost of approximately \$50,000 by TABC and the March of Dimes. Also, TABC instituted the requirement that seller-training providers present fetal alcohol syndrome training.

In a two-week period in April 2003 during TABC's routine inspections, it was found that only 17.6% of the retailer locations had posted the warning signage. In early spring, TABC included an article in its external newsletter, requesting retailers to comply with the voluntary signage. In addition, a letter signed by Chairman Steen was sent to on-premise retailers in June 2003 requesting voluntary compliance. In July/August 2003, another survey was conducted; it was found that 23% of the retailers voluntarily posted the signage.

Ms. Fox stated that since these efforts, a request has been made to require that the signage be mandatory. She stated that it costs approximately \$50,000 to require on and off-premise retailers to do

signage. She explained that alcoholic beverage containers list the Surgeon General's warning. In an effort to reduce costs—should the Commissioners choose to adopt a rule to require mandatory signage—she suggested that the signage requirement be applied only to on-premise retailers and that the decal signage be changed to a less expensive signage. She showed a “mock-up” sign that could be used that is similar to TABC's felony weapons sign (Attachment 9). By utilizing these two methods, the cost for requiring mandatory signage would be reduced to approximately \$15,000. Ms. Fox detailed the many state and federal agencies that already provide information on fetal alcohol syndrome.

Ms. Fox referred to a survey—recently brought to her attention—published in December 2002 by the Texas Birth Defects Research Center (TBDRC) (under Attachment 9). TBDRC did a survey of women from ages 15 to 44 about various women's health issues, including alcoholic beverage consumption during pregnancy. Ms. Fox noted the responses to the following questions:

Question	Response	1997 Percent	2001 Percent
What do you think causes birth defects?	Alcohol	52.2%	58.3%
What can a woman do to reduce the risk of birth defects?	Avoid alcohol	44.4%	48.8%
Have you ever read or heard the Surgeon General's recommendation that women who are pregnant or considering pregnancy should not drink alcoholic beverages?	Yes	86.5%	89.8%
Where did you read or hear the Surgeon General's recommendation?	Printed materials	55.4	43.2%
	Radio or TV	40.6%	30.4%
	Health care provider	24.5%	31.5%
	Friends, relatives, coworkers, etc.	21.7%	25.1%
	Labels or signs	6.6%	8.1%

Ms. Fox discussed various statistics regarding mandatory signage. Twenty-two states require mandatory signage. Of these, 21 have

mandated this by statute, and one state has mandatory signage by rule. From analyses done of Texas on-premise establishments, approximately 38% of alcoholic beverages sold on-premise are by open container. The remainder--approximately 62%--is sold in bottles or containers, which already have affixed warning labels.

Ms. Fox discussed the various statutorily mandated signages for on- and off-premise establishments. Typically, mandatory signage violations that are found during inspections result in a verbal warning for the first violation, and then a written warning for the second violation. Ms. Fox explained that while mandatory signage is verified during inspections, such violations are a lower priority for TABC than those violations dealing with public safety.

Mr. Seliger questioned if there was any data concerning women who were informed of fetal alcohol syndrome but who nonetheless consumed alcohol while pregnant. **Ms. Fox responded that she had not seen such data but would research the issue.**

Chairman Steen stated that five people had registered to provide public comment on the fetal alcohol syndrome agenda item. He asked that each limit their comments to five minutes each.

#### **PUBLIC COMMENT AND CONSIDERATION OF IMPOSING MANDATORY FETAL ALCOHOL SYNDROME WARNING SIGN REQUIREMENT**

Chairman Steen called upon Kelly Barker to provide public comment. Mr. Barker stated that he is the father of a daughter with fetal alcohol syndrome. He discussed the many resources it costs his family and society in raising a child with fetal alcohol syndrome. He stated that the expense required to post warning signs is a small price to pay in comparison to the costs involved with fetal alcohol syndrome. He urged the Commissioners to require mandatory postings in order to increase knowledge and awareness of this issue.

Chairman Steen called upon Jim Haire from Tyler, Texas. Mr. Haire earlier had provided a written copy of his presentation to the Commissioners (under Attachment 9). Mr. Haire discussed statistics from various studies and reports and quoted a Texas Department of Health report: "The results from these surveys indicate that about one-third of Texas women of child-

bearing age may not be aware of the risks posed to the unborn child by maternal alcohol consumption during pregnancy..." Mr. Haire discussed a survey in which he found that roughly one in eight alcoholic beverages served to women in Texas' bars and restaurants carry a health warning. Chairman Steen received clarification from Mr. Haire that this information was obtained from an informal survey that Mr. Haire conducted. Mr. Haire requested that the TABC Commissioners adopt a rule requiring that a warning sign (under Attachment 9) be displayed in two locations of a facility: the entrance area and in the women's restroom.

Chairman Steen called upon Rose Hook. Ms. Hook stated that she is a project coordinator with the University of San Antonio Health Science Center. She discussed a project study to teach Latinos about fetal alcohol syndrome. She stated the project found that most of the Latino women in the project were initially unaware of fetal alcohol syndrome. Ms. Hook emphasized the importance of posting bilingual warning signs about fetal alcohol syndrome.

Chairman Steen called upon Joye Hyman of Cedar Creek, Texas. Ms. Hyman began her comments by stating that the University of Wisconsin at Madison reports that 64% of its student population engages in binge drinking, well above the national average of 44%. However, she stated that the university also offers a class concerning fetal alcohol syndrome. Ms. Hyman discussed the need for mandatory signage, enforcement, and continuous improvement of the signage.

Chairman Steen called upon Glen Garey of the Texas Restaurant Association. Mr. Garey cited a study (under Attachment 9) that stated there was no indication that warning posters or signage changed intentions of women to avoid alcohol during pregnancy.

Mr. Haire stated that there was documentation provided to the Commissioners at a TABC Commission meeting last summer indicating that the warning signs do make a difference. Ms. Madden responded that there are concerns about the effectiveness of the signs and the possibility for legal liability on the state and/or the sellers. She stated that she was not prepared to vote on the issue and wanted staff to further study the legal implications.

**Ms. Madden moved that the TABC Commissioners table the discussion of considering imposing mandatory fetal alcohol syndrome warning signs until staff have reviewed the legal implications and other issues. After discussion by the Commissioners, Mr. Seliger seconded the motion. The motion carried.**

### **EXECUTIVE SESSION**

Chairman Steen announced that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 2:56 p.m. on October 27, 2003, and an executive session would be held to consult with Legal Counsel on pending and anticipated legal claims against the agency and on rule-making proposals, Numbers 7-13, pursuant to Texas Government Code, Section 551.071, and to deliberate the evaluation and duties of the administrator, pursuant to Texas Government Code, Section 551.074.

Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being October 27, 2003, and the time, 4:30 p.m. He stated that no final action, decision, or vote was made in the executive session.

### **ADJOURNMENT**

**Mr. Seliger moved to adjourn. Ms. Madden seconded the motion. The motion carried, and Chairman Steen announced the adjournment.**